



## Dealing with Assault

The **Consent Counts** program was designed to assist our communities in promoting a culture of consent through education and providing resources on how to deal with nonconsensual incidents.

### **1. How do I decide if I should report what happened to the police?**

Everyone's view of justice does not look the same. Some people want to hold their assailant accountable and the criminal justice system was created to do that. The justice system was also created to prevent an assailant from doing such things to other people. Some people don't feel the consent violation is serious enough to be reported as a crime. Some people don't want to cause harm to their assailant which would come with filing a police report against them. Some people are afraid of being outed. Some people need counseling first to deal with the trauma. Some people who don't report an assault later regret not doing so, just as some who do file a report regret doing so. It's an intensely personal decision that you have to make with legal and/or mental health assistance.

### **2. Who can help me decide if I should report what happened to the police?**

Consult with sexual assault centers and domestic violence centers that can help to guide you through the process of making a decision. The Network la Red is a nationwide crisis center that is LGBTQI and kink-aware: <http://tnlr.org/> or call 800-832-1901. You can also search online for an LGBT crisis center, like The Anti-Violence Project in your city, or for a local nonprofit that is not affiliated with the police department. If you report the assault, then the county victim advocacy services associated with law enforcement may be able to assist you in getting housing or financial assistance.

### **3. What do I do if I'm hurt but I don't know if I want to report it to the police?**

Get medical treatment immediately following an assault. With BDSM-related injuries, you don't have to go into details about the cause. If rape was involved, ask the hospital if they have mandatory reporting to the police of your injuries if they do a "rape kit." There are time-limits for collecting evidence and getting treatments to prevent pregnancy and/or Sexually Transmitted Infections if you have been exposed—so the sooner you do this step, the better.

### **4. If I report the assault to the police, does that mean I'll have to go through a trial?**

About 85% of reported cases never go to trial, which means the prosecutor declines to file charges. However, if someone is reported for assault multiple times, your report may be taken more seriously by prosecutors. Of the cases that are prosecuted, approximately 90% end in plea deals. If the case is settled out of court, then the complainant doesn't go through a trial while the perpetrator experiences consequences for committing the crime.

## **5. Is it too late to report what happened if it was two weeks ago?**

You can report a crime two weeks or even more after the incident, but it isn't as likely that it will be prosecuted because the delayed complaint may be seen as less credible and because it's more difficult to collect usable evidence at that point. However, there is a statute of limitations against prosecuting crimes years after they happened, depending on the type and degree of crime. The statute of limitations doesn't put a deadline on reporting a crime and it may be useful to report a crime even after the statute expires to open an investigation into a person or to support an ongoing investigation of a repeat offender.

## **6. I'm transgender or my assailant was transgender. Does that mean I shouldn't report it?**

People who are transgender or gender queer can get the assistance of a local LGBTQ victim advocacy program to discuss your options. If there isn't one in your area, call the Network la Red <http://tnlr.org/> or call 800-832-1901. The gender identity and orientation of those involved be a factor in how you are treated by law enforcement and the judicial system, and your first concern should be for yourself.

## **7. Are kinky people discriminated against when they report an assault to the police?**

BDSM is often misunderstood, so you may find that law enforcement officers, prosecutors and social service workers don't understand BDSM or consent in a BDSM context. They may blame you for agreeing to do BDSM. When kinky people also have other marginalized identities, you can face a poor or a hostile response. For example, a kinky person of color or kinky gay male bottom may face more barriers to accessing law enforcement support.

## **8. How can I explain this was assault instead of consensual BDSM?**

Download the NCSF wallet card: *BDSM vs. Assault for Law Enforcement*, Victims Advocates & Social Services. It's a handy tool to quickly be able to explain the concept of BDSM vs. Assault in terms of consent rather than specific practices. Be honest about what happened with the police because they will not respond well if they find out you are lying about any point. Tell them what you agreed to do, what activities violated your consent, and bring any medical records or emails/texts of your negotiations.

## **9. Are there any options other than reporting it to the police?**

If your consent is violated at a BDSM event or party, report it to the group leaders immediately. Hold your local groups and events accountable for helping to stop consent incidents by encouraging the group to establish a Consent Policy and deal with incidents when they happen in communal spaces. Consult with NCSF's *Guide for Groups* on what your group can do to establish a consent policy. You can also get a restraining order to keep someone away from you, which becomes part of that person's record and keeps them from getting near you. You can also file a civil lawsuit if you are injured and have medical bills or lost time from work.

## **10. Will I be outed to my family or job if I report a crime?**

Once you make a criminal report, anything that you tell police or prosecutors could be made public. Whether this is likely depends on the seriousness of the case and the profile of the people involved. Most prosecutors and law enforcement officers are careful to protect your identity when

dealing with sexual assault cases. However, in cases involving BDSM, witnesses and complainants do not usually have their identity protected.

**11. Will I be shunned by BDSM groups for reporting and thereby “outing” someone who assaulted me?**

The crime of assault is much more serious than BDSM confidentiality rules.

**12. I’m the Top. Who will believe that I was the one assaulted?**

Unfortunately tops as well as bottoms can be victims of assault. Assault is also non-gender-specific. In either case, you will have a much more difficult time with law enforcement due to the stereotypes that exist.

**13. What other issues should I consider when deciding whether to report a BDSM-related assault?**

People who are kinky may have a more difficult time reporting an assault to the police if they are also People of Color, undocumented immigrants, if English is not their language of comfort, if they have a disability, a past experience with incarceration or a criminal record of any kind. Be aware that the process takes a lot of time and that your identity may not be protected. For example, people who are raped usually have their identities protected while people who are assaulted may not.

**14. How can I help?**

No one should have to be alone when dealing with a sexual assault. If you know someone who has been assaulted, then listen to their story, sympathize with the pain they are in, and help them get the professional help (especially counseling) that they may need to deal with the situation. Read NCSF’s Trauma Pamphlet under Consent Counts: Guides for Groups. If the consent violation happened in a group setting, support the person making the allegation and encourage your leaders to ask everyone involved what happened. When kinky people choose to report an assault, they need an advocate by their side who has been trained in how to deal with social services and law enforcement.

**15. What else can I do?**

Make consent an issue with your local groups and events. Host or participate in discussions and workshops on interpersonal violence and sexual assault. Make it a priority that communal spaces are safe by encouraging your group and events to create and enforce a consent policy (consult NCSF’s Guide for Groups for more information). You can also help network within your local community to make sure that your friends know their rights and options so they can get help and the justice they deserve.